

taxpayers ought to expect and which I hope I am surprised some day and I can say that we have, but I don't want to categorically say that today.

This bill also has innocent spouse reforms so that innocent spouses are treated exactly as they are, and that is they are innocent.

This bill limits the seizure authority of the IRS. It allows taxpayers to sue the IRS if its agents are negligent in violating the code and the constitutional rights of our citizens. It prohibits the IRS from contacting third parties without prior notification to the taxpayer. It requires that the IRS exhaust all collection options, including installment agreements, before seizing a business or a principal place of residence.

I could go on and on, but the point is that the bill before us is strong, comprehensive reform. This bill is stronger than its House-passed companion, and we can all thank Chairman ROTH and the Finance Committee generally—but without his leadership, it would not have happened—for making this strong, because we do need to pass this legislation. We need to insist that the conference report be equally as strong. And then we need to get it on the President's desk as soon as possible.

The American people deserve to be treated with respect, especially by their own Government. The American people deserve this bill, and the American people deserve to be represented by Senators who have the courage and foresight to not only enact this legislation, but after it is enacted, to see, through the constitutional responsibilities of oversight, that it is actually carried out.

When this legislation is passed, I want to be able to say to the American people, "We're on the road to eliminating the culture of intimidation within that agency." I want to be able to say to the American people, "On April 15th next that you're treated by the IRS with the same courtesy, with the same accurate information and with the same timely response that they expect out of you, the taxpayer, on April the 15th."

I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, Senator GRASSLEY not only was on the National Commission on Restructuring the IRS, along with myself and Congressman PORTMAN and Congressman CARDIN on the House side, but long before I ever became interested in this issue, Senator GRASSLEY, along with Senator Pryor—indeed, Senator GRASSLEY may want to offer some historical reflections on this—has been involved with trying to change the law and put the law on the side of the taxpayers, to give them more rights.

I believe, I say to the Senator, the first taxpayers' bill of rights legislation was enacted, was it 1994? I ask the Senator from Iowa, the first taxpayers'

bill of rights—I know Taxpayers' Bill of Rights II was 1996.

Mr. GRASSLEY. I think the first one would have been in 1988 or 1989.

Mr. KERREY. The Senator from Iowa and Senator Pryor were partners in developing that legislation. Did the two of you work together on the Taxpayers' Bill of Rights II?

Mr. GRASSLEY. Yes.

Mr. KERREY. Both of those pieces of legislation were landmark bills. The reason they were landmark bills is they laid a foundation upon which we are building this legislation. All of title III, which adds additional powers to what the taxpayers will be granted, was added as a consequence of evaluating whether or not the Taxpayers' Bill of Rights II has gone as far as we want to go.

I say that because a lot of colleagues have come up and said, "Well, does this legislation go too far; does it give taxpayers so many new rights that the IRS will not be able to do their job?" which is to collect taxes? "Is there any power left in the IRS?" And the answer is yes.

All through this we have been conscious of the need to balance, and what we have been able to do is look at the impact of Taxpayers' Bill of Rights II. We can see additional authority needs to be granted to taxpayers. I think it is an admirable balance, and it would not have been possible to get it done without Senator GRASSLEY's longstanding interest and understanding and leadership on this issue. I publicly thank him for making certain that we extend additional rights without undercutting the authority of the IRS to do what we have asked it to do.

Mr. GRASSLEY. Mr. President, I thank the Senator from Nebraska very much for his kind remarks and for the background of the Taxpayers' Bill of Rights I and II, but most importantly for his thoughtful leadership on the Commission, because that was 1 year of very hard work for Senator KERREY. He gave it the attention that this problem deserves. The strong piece of legislation that has gone through the House of Representatives and now strengthened by the Senate Finance Committee under Senator ROTH's leadership would not have been possible without the digging and leadership that Senator KERREY has shown.

Mr. KERREY. Now let's do trade.

Mr. GRASSLEY. We will do trade. I yield the floor.

Mr. KERREY. Likewise, Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I ask unanimous consent that the Senate con-

tinue H.R. 2676 for debate only until 3:30 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. KEMPTHORNE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I ask unanimous consent that the Senate continue the debate on H.R. 2676 for debate only.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask permission to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAY AND CHASE

Mr. GRASSLEY. Mr. President, I would like to talk about "pay and chase" today. "Pay and chase" is a Pentagon term used to describe another misguided policy. With pay and chase, the Pentagon pays the bills first and then tries to track down the receipts later on. Sometimes they find them; sometimes they don't. And sometimes, they don't even bother to look. This is not a good policy. It is unbusinesslike, and it's dangerous.

Under current law, payment is not due until a valid receipt is in hand. A certified receipt tells you that the goods and services have in fact been delivered.

So, to me, pay and chase is a mystery. Why, Mr. President, would anyone—in or out of government—want to pay a bill without a receipt? That defies understanding. It makes no sense. Unfortunately, this is exactly what the Pentagon bureaucrats are urging Secretary of Defense Cohen to do.

Today, pay and chase is unofficial policy. It's practiced but not authorized by the law. But the Pentagon bureaucrats want Secretary of Defense Cohen to change that and make it O.K.—with the law.

Secretary Cohen made his request in a letter to the Senate dated February 2, 1998.

Mr. President, I ask unanimous consent to have his letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, DC, February 2, 1998.

Hon. AL GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am forwarding for your consideration draft legislation that, if enacted, would be entitled the "Department of Defense Reform Act of 1998." This bill is intended to form the core of the Defense Reform Initiative (DRI). I request prompt action by the Congress on this proposal.

The DRI is an exciting, sweeping reform of the "business" of the Department of Defense. It will affect the Department from its corporate headquarters at the Pentagon to each service member and his or her family throughout the world. While aspects of our reforms can and already are being accomplished within existing statutory authorities, the proposed bill is crucial to implementing many of the most important and far-reaching reform elements that will make the Department more business oriented. The DRI will give us the authority to use those practices that our American industry counterparts successfully have used to become leaner and more flexible in a world of increasing change and flexibility.

Re-engineering the Department. We will re-engineer by adopting the best private sector business practices in defense support activities. For example, we propose to incorporate state-of-the-art business procedures in our travel system. Section 301 would streamline our household goods transportation so that simplified "Do-it-Yourself" (DITY) moves would be available to every service member. Section 401 would authorize streamlined procurement payment practices so that our civilian contractors would get prompt and accurate payments for their goods and services. Section 403 would enable all Federal agencies more freely to use private sector practices in the sale of surplus personal property, alone or in conjunction with current Government reinvention and streamlining initiatives, and to foster more expedient and efficient disposals of property.

Consolidation. Next, we will consolidate organizations to reduce unnecessary redundancy and to move program management out of Pentagon corporate headquarters and back into the field. The Office of the Secretary of Defense and defense agency personnel will be cut, as will personnel in Department of Defense field and related activities. Section 202 supports this initiative by extending current force drawdown authorities through September 30, 2003. Section 107 would clarify that I can make organizational changes as the National Defense University in order that I can move parts of organizations into that structure when appropriate.

In addition to cutting the size of staffs, the DRI will establish a number of new organizational arrangements. Among these is a Threat Reduction & Treaty Compliance Agency created to address the challenges of weapons of mass destruction. Section 102 supports this initiative by eliminating the requirement for an Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs. Sections 104 through 107 support another important consolidation initiative—establishing a Chancellor for Education and Professional Development to raise the quality of civilian training and professional development to world-class standards. Part of our consolidation effort will enhance the role of the National Guard and other Reserve elements in domestic emergency responses. Sections 501 through 503 support this effort by making

our Reserve component and National Guard members more available and an even closer member of our family.

Competition. We will compete many more functions now being performed in-house, which will improve quality, cut costs, and make the Department more responsive. While this initiative will apply throughout the Department, some candidates for competition include civilian and retiree payments, personnel services, surplus property disposal, national stockpile sales, leased property management, and drug testing laboratories. Section 402 would permit use of contractor employees of a contractor whose system is being tested, to provide the analytic and logistic support in those cases where contractor impartiality is assured.

Elimination. Finally, we will eliminate excess infrastructure. Since the end of the Cold War, the Department of Defense has reduced its military forces significantly, but infrastructure cuts lag behind. The defense budget has been reduced by 40 percent, and military personnel will have declined by 36 percent by 2003. At the same time, after four rounds of base closures, the Department's domestic base structure is only 21 percent slimmer. Consequently, we need to make more infrastructure reductions. Money is wasted on keeping open excess installations. These resources can better be directed to support the warfighter. Title VII of our bill would authorize two additional rounds of base closures. Each round will provide annual savings of \$1.4 billion.

The DRI would increase direct spending annually by less than \$10 million during fiscal years 1999–2002; therefore, it is subject to the pay-as-you-go (paygo) requirement of the Omnibus Budget Reconciliation Act of 1990. This proposal should be considered with other proposals in the President's Fiscal Year 1999 Budget that together meet the paygo requirement.

Enactment of this proposal, together with our other management and structural changes, dramatically will enhance our ability to improve organizational efficiency while making more effective use of the Department's financial and personnel resources. I urge the Congress to enact this legislation promptly so that we can pursue these crucial management reforms.

Sincerely,

BILL COHEN.

Mr. GRASSLEY. Making pay and chase official policy is just one small piece of Secretary Cohen's Defense Reform Initiative or DRI package. Secretary Cohen's pay and chase proposal is embodied in section 401 of the DRI.

Mr. President, I ask unanimous consent to have section 401 printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION 401. AUTHORITY FOR STATISTICAL SAMPLING TO ENSURE RECEIPT OF GOODS AND SERVICES.

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by inserting after section 2405 the following new section 2406:

§2406. Statistical sampling procedures in the payment for goods and services before verification

“(a) VERIFICATION AFTER PAYMENT.—Notwithstanding section 3324 of title 31, in making payments for goods or services, the Secretary may prescribe regulations that authorize verification, after payment, of receipt and acceptance of goods and services. Any such regulations shall prescribe the use

of statistical sampling procedures for verification and acceptance purposes. Such procedures shall be commensurate with risk of loss to the Government.

“(b) PROTECTION OF PAYMENT OFFICIALS.—Provided that proper collection actions have been executed, a disbursing or certifying official, who relies on the procedures established pursuant to this section, is not liable for losses to the Government resulting from the payment or certification of a voucher not audited specifically because of the use of such procedures.”.

(b) CLERICAL AMENDMENT.—The table of sections for such Chapter 141 is amended by inserting after the item relating to section 2405 the following:

“2406 Statistical sampling procedures in the payment for goods and services before verification.”

Mr. GRASSLEY. The Section 401 pay and chase proposal has three parts.

First, Section 401 would authorize DOD to pay bills without receipts—with no dollar limit.

Second, Section 401 would require only random after-the-fact verification of some receipts.

Third, disbursing officials would be relieved of all responsibility for erroneous or fraudulent payments that could result from this policy.

Mr. President, this is a terrible idea. Section 401 says it's OK to pay bills without receipts. Just do it—\$50,000; \$500,000; \$1 million; \$10 million; or \$100 million. The sky's the limit. It doesn't matter how big the bill is. Just pay it! And if you make a mistake, that's OK, too. Not to worry.

Nobody can be held accountable for erroneous or fraudulent payments. This proposal could not have come at a worse time. All reports from the General Accounting Office (GAO) and Inspector General (IG) clearly indicate that DOD's internal controls are weak or non-existent.

Not only do weak or non-existent internal controls make for easy embezzlement, they invite it. And it seems like embezzlers are on a rampage. That's the subject of a recent article entitled "Embezzlement Growth is Dramatic." The article was written by Mr. Gary Strauss and appeared on page 1 of USA Today on January 13, 1998.

Mr. President, I ask unanimous consent to have this article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From USA Today, Jan. 13, 1998]

EMBEZZLEMENT GROWTH IS "DRAMATIC"

(By Gary Strauss)

Wendell Doman wasn't your typical embezzler. A Mormon and father of seven, Doman didn't steal from corporate coffers to fund a wild spending spree, trophy mistress, gambling or drug addiction. Instead, the 37-year-old chief financial officer of New Age music company Narada Media was thinking long term.

Sure, he spent \$37,000 on a BMW he judiciously kept away from the office. And there was the \$243,500 Minneapolis home to which he moved after quitting Milwaukee-based Narada in February. But the bulk of the \$1.13 million federal prosecutors say he stole was squirreled in Vanaguard's Growth and Income stock mutual fund.

It's unclear how many Wendell Domans lurk in the offices of Corporate America. Only a fraction of embezzlement cases are reported—the prime reason the Justice Department has difficulty gauging the white-collar crime that can be among the most troubling for businesses.

But judging from anecdotal accounts from prosecutors, insurers and fraud specialists, 1997 may go down as a record year for corporate embezzlement.

"There's been a dramatic increase in embezzlement across the board, everything from small mom-and-pop shops to major corporations," says Chris Franklin, who manages embezzlement claims for Chubb, a major provider of fidelity insurance, which covers businesses' embezzlement losses.

High six-figure and low million-dollar thefts such as Doman's are increasingly common, says Tom Harrington, head of the FBI's economic crimes squad in the agency's Philadelphia office. "I talk to my counterparts all across the country. The amounts being embezzled are growing."

The FBI estimates 15,700 workers were arrested for embezzlement in 1996, up almost 25% since 1993. But the FBI numbers probably account for just 10% of embezzlers, says Frank Hagan, a criminology professor at Pennsylvania's Mercyhurst College and co-author of *White Collar Deviance*, to be released next year. "These numbers aren't accepted by criminologists because embezzling is grossly under-reported," he says.

Most companies are too embarrassed to report such white-collar crimes for fear of appearing inept, spurring more employee theft or angering shareholders, clients or customers, says Sharon Parker, who's prosecuted numerous white-collar crime cases as an assistant U.S. attorney in Indiana. Nor are companies legally bound to report embezzlement. Only banks are required to notify authorities.

Yet based on a recent, first-of-its kind survey of 2,600 fraud investigators, U.S. businesses lose more than \$400 billion annually to fraud, nearly a third of that from embezzlement, says Joseph Wells, head of the 20,000-member Association of Certified Fraud Examiners.

"This reality is a problem, particularly among mid- and upper-level managers," says Wells, author of *Occupational Fraud and Abuse*. Wells cites decentralized operations, mid-level management layoffs, rising computer use and a booming economy.

The flourishing cottage industries of fraud investigation, forensic accounting and white-collar criminal defense law underscore embezzlement's growth.

"Business is booming," says Howard Silverstone, a forensic accountant with Lindquist Avey Macdonald Baskerville, a financial fraud investigator. "It's up 300%-400% since the start of the decade. And the cases we hear about are just the tip of the iceberg. Most of the time, it's luck that this kind of crime is even discovered."

Hard statistical evidence aside, embezzlers are getting more brazen.

At his recent sentencing on federal wire-fraud charges, Doman contended he was entitled to keep about \$206,000, the earnings on the stolen money in his Vanguard account. U.S. District Judge Charles Clevert scoffed at Doman's request, sentenced him to 33 months in prison and ordered him to pay Narada \$1.34 million. Doman, serving time in a federal prison in Oxford, Wis., could not be reached.

Wednesday, former Los Angeles *Times* editorial business manager Charles Boesch was sentenced to four years in prison federal charges of embezzling almost \$780,000 over four years.

Prosecutors say Boesch, 53, took the money—intended as payments to freelance

writers—over four years by submitting bogus invoices for payment to accomplices, including his former son-in-law.

UNDONE BY TIME

Doman and Boesch's thefts look like chump change compared to the \$12.5 million Francis Vitale Jr. stole from specialty chemicals maker Engelhard over nine years.

Vitale, Engelhard's former vice president of strategic development and corporate affairs, used the money to accumulate one of the world's most extensive collections of rare and antique clocks. Most of the collection was housed at his Spring Lake, N.J., antique clock shop. It was auctioned for \$8 million to repay Engelhard's insurer.

At Engelhard, where he earned a six-figure salary and was a member of the management committee, Vitale was "extremely well-respected" until a routine audit uncovered the thefts, says corporate spokesman Mark Dresner.

Vitale had sole discretion to approve international marketing expenses, so he was able to fabricate more than 150 invoices for his clock shop's purchases into bills Engelhard "owed" for expenses. Vitale, 53, is to be sentenced Thursday.

It's not uncommon for embezzlers to go undetected for years, largely because managers have few supervisors holding them accountable, says Silverstone, the forensic accountant.

That's precisely what happened at Day-Lee Foods, a Japanese-owned meat-exporter in Santa Fe Springs, Calif. In what may be the largest U.S. embezzlement case ever reported, Chief Financial Officer Yasuyoshi Kato stole \$95 million.

Until the scheme was uncovered by federal tax investigators in March, Kato stole by issuing company checks to himself for seven years. He covered the missing funds by securing corporate loans to Day-Lee from California subsidiaries of Japanese banks, according to court filings.

Kato, who earned \$150,000 a year, had sole control over Day-Lee's finances. That also enabled him to pay earlier loans by arranging even more loans.

DOING THE CHA-CHA

Prosecutors contend Kato went through money like water, buying beachfront condominiums, citrus ranches, even a nightclub named Club Cha-Cha. Money also went to his ex-wife, who bought a rare car dealership, jewelry and animal menagerie that included miniature horses and sharks.

In October, Kato was sentenced to 63 months in prison. Day-Lee's parent, Nippon Meat Packers, estimates losses, including interest on the loans at \$100 million.

What motivate embezzlers? Usually any one of a number of vices, although experts paint a portrait of a compulsive, obsessive person in a position of power.

Insiders at Engelhard joke about Vitale's clock fetish.

Attorneys involved in the Doman case point to a conservative, tightly wound CPA who was paying nearly a third of his \$75,000 salary to support his ex-wife and children. Doman also may have felt a sense of entitlement. According to court records, he felt his bosses had reneged on a purported offer of a 5% stake in the company before it was to be sold.

Kato's attorney, John Yzurdiaga, says Kato was merely trying to satisfy his ex-wife's insatiable spending appetite.

But, notes Chubb's Franklin, the pilferer could be anyone. "We've seen cases where daughters have ripped off their father's firms," he says. "You can't trust anybody."

In virtually all cases, there are systemic problems, such as lax internal controls, that make it all too easy to steal, says Bart

Schwartz, CEO of fraud investigator Decision Strategies/Fair-fax International. "In a booming economy, everyone's looking at business opportunities. They aren't looking internally," he says. "That can allow schemes to go on for years."

Increasingly, companies are initiating countermeasures. Barnes & Thornburg, a 200-member South Bend, Ind., legal firm, formed a white-collar unit a year ago. They've advised clients to implement compliance programs and improve internal accounting procedures, such as requiring more than one employee to sign checks, says unit chief George Horn.

But even Barnes & Thornburg wasn't immune. Longtime partner Ernest Szarwark was indicted in July for mail fraud. He's charged with stealing \$500,000 over eight years by taking fees clients paid him and not submitting them to the firm. He also wrote himself checks from the firm's trust account.

WHERE THERE'S A WILL . . .

Ronald TerMeer, on probation after spending 18 months in prison for embezzling \$225,000 from Ohio-based Huntington National Bank, says even with beefed up controls, greedy employees will try to circumvent the system.

"You can probably always find a way to steal. But it usually takes someone with obsessive, compulsive behavior to embezzle," says TerMeer, the bank's former controller. "In my case, it was compulsive gambling and alcohol addiction." TerMeer has written a self-published book: *From Doing Federal Time, A Handbook for Businessmen Who are Facing Federal White Collar Criminal Charges*.

Experts fear corporate embezzlement is likely to become more pervasive and the thefts even greater.

"Individuals believe they can perpetrate these crimes and get away with it," says Chuck Owens, chief of the FBI's financial crimes unit. "Corporate insider fraud will remain a substantial problem. There's a fairly high greed level out there."

Mr. GRASSLEY. Mr. President, this is what the article says.

"Lax internal controls" are the cause for "a dramatic increase in embezzlement across the board."

"Lax internal controls" will be laxer if Section 401 goes through.

Now, Mr. President, there is no magic in a receipt.

A receipt is not a leakproof defense against fraud—mainly because a receipt is so easy to forge.

A receipt by itself is not much of a weapon.

It is just one weapon in the controller's arsenal.

To be an effective weapon, a receipt must be coupled to other control devices—like separation of duties.

Unfortunately, at the Pentagon, receipts don't necessarily go hand-in-hand with the other control mechanisms.

I learned that lesson in my examination of several DOD fraud cases:

The Lugas case at Reese AFB, Texas; the McGill case in Norfolk, VA; and the Krenik case in the Pentagon.

In these cases, there was no separation of duties.

For example, I discovered that Mr. Krenik's duties literally covered the waterfront. He was involved in every phase of the cycle of transactions from beginning to end. He developed requirements for goods and services,

wrote purchase orders, steered contracts to favored vendors, received and accepted deliveries, certified contract performance by signing receiving reports like the DD-250, and submitted invoices to the finance office for payment.

In Mr. Krenik's organization—the 7th Communications Group—there was no separation of duties. In that environment, it was so easy for Mr. Krenik to fabricate phony invoices and receipts and get paid.

He said it was a piece of cake. It was just too easy.

This is what Mr. Krenik said after being apprehended:

I saw how others had manipulated the DD-250s [receipts], so I thought I could do that also. . . . It was so easy to generate fake billings and open the Post Office box.

I fear that Mr. Krenik was led into temptation by lax internal controls.

With separation of duties, it would have been very difficult—if not impossible—for him to do what he did. More scrutiny by others would have greatly increased the probability of detection. That fear alone is sometimes enough to deter fraud.

With duties properly separated, the goods are delivered to a central warehouse. After a receipt is certified by an independent warehouse-person, the goods are then turned over to the customer or user—someone like Mr. Krenik.

In the right circumstances, a certified receipt can be a powerful weapon, and I want the certified receipt to be a powerful weapon in the DOD Comptroller's arsenal.

I want receipt verification to be at the top of the checklist of things to do before making a payment.

Above all, I do not want to see this body gut DOD's internal financial controls—or what remains of them—in the name of “defense reform.”

Section 401, as written, would gut DOD's remaining internal controls.

Knowing that DOD's internal controls are already weak or non-existent, the GAO and the IG oppose Section 401, as written.

Section 401 would eliminate what's leftover, and it “ain't” much.

And the crooks are hard at work. We know that for a fact because there is a new case at Dayton AFB, Ohio.

Though we don't yet have all the details on the case, it looks like a carbon copy of the Krenik case—fraudulent invoices and receiving reports valued at nearly \$1 million.

Dayton happened, despite Air Force assurances to the contrary.

The Air Force assured me on July 18, 1997, in no uncertain terms, that a Krenik-style operation could never happen again.

The Air Force said it had “more internal controls to prevent this type of action from happening again.”

I hate to say it but Dayton was happening as those words were being placed on paper.

Weak or non-existent controls combined with heightened embezzlement activity do not argue for Section 401.

So why push pay and chase now?

Pay and chase is a bad idea. It would make DOD's accounts more vulnerable to theft and abuse.

They are already far too vulnerable.

What we need to do now is strengthen internal controls not weaken them.

We need to make the certified receipt the potent anti-fraud weapon that it should be.

DOD should not be authorized to make payments without receipts.

And those responsible must be held accountable for erroneous and fraudulent payments—as they are today.

As I see it, there are two ways to handle Section 401:

(1) remove it entirely from the DRI package; or (2) modify it.

Mr. President, I am ready to work with the Armed Services Committee in developing a mutually acceptable modification to Section 401.

It can be done, and I could help the Committee do it.

There is a way to do it that will serve the best interests of the taxpayers and the Armed Forces.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent to proceed as in morning business for not to exceed 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MICROSOFT

Mr. GORTON. Mr. President, my esteemed colleague, the senior Senator from Utah, Senator HATCH, was on the floor this morning once again after his letter of last Friday denouncing Microsoft's use of its First Amendment rights to defend itself against an unwarranted attack by the Department of Justice and a handful of state Attorneys General.

At one level, at least, he went beyond the remarks in his letter with the totally unsubstantiated claim that the many C.E.O.'s who joined with Microsoft last week and again today to plead with the Department of Justice not to inhibit or to postpone the marketing of Windows' 98 were somehow or another coerced into taking this position. As a consequence the Senator from Utah not only questions the right of men and women leading major American corporations to speak out on behalf of their products, but also insults them by saying they acted outside of their own freewill. Mr. President as I have said, there isn't the slightest evidence for this proposition.

These C.E.O.'s were and are defending the right of a magnificent and innovative American corporation to keep on innovating, to keep on providing newer and better products for the people of the United States, and for that matter, for the people of the world.

The Senator from Utah buttressed his position by quoting from Judge Robert Bork, who has had a dramatic late-life conversion from free market principles to support willing govern-

ment intervention in perhaps the most dynamic of all of our free markets. While the Senator from Utah defended Judge Bork's objectivity in this, he failed to note that the judge has recently been hired by Netscape and by others.

Now, Judge Bork's historic position is perhaps quoted best in just two lines from his book “The Antitrust Paradox,” in which he says “the responsibility of the federal courts for the integrity of virtue of law requires that they take consumer welfare as the sole value that guides antitrust decisions.” The sole value that guides antitrust decisions should be consumer welfare. Mr. President, in this entire debate, we haven't heard a breath, a whisper, or a sentence about consumer welfare.

This is a campaign by Microsoft's unsuccessful competitors to limit Microsoft's competitive ability to benefit consumers. Consumers aren't complaining, competitors are.

Judge Bork has dramatically changed positions from that of a consumer advocate to an advocate of government control. I must confess, Mr. President, that there is precedent for his position. There are antitrust cases that might justify some sort of move of this nature by the Department of Justice. In 1945 in a decision relating to ALCOA, the Supreme Court determined that ALCOA's “superior skill, foresight and industry,” were exclusionary of less efficient forms. In 1953, in a case involving the United Shoe Machinery Company, it was decided that United's long line of superior shoe machines and low leasing rates illegally excluded higher cost rivals. Now if that is the theory of antitrust under which Judge Bork is operating, Senator HATCH is operating and the Department of Justice is operating, let them say so. Let them say that they don't want innovation, that they don't like the new developments, and that they do not want advancing technology.

But, Mr. President, the whole fight in this case is over whether or not we are going to permit the next generation of operating systems to go to market. It is that that is at issue, and only that.

Finally, Mr. President, in this connection, Senator HATCH ended his remarks with a line from the Rolling Stones. In the interests of fairness and impartiality, I think that we ought to try another one. When I hear Senator HATCH defending Janet Reno and lawyers of the Justice Department I figure he has been listening to “Sympathy for the Devil” a little too much lately. There is another Rolling Stones song that describes what Microsoft does for it's customers: a little hit called “Satisfaction.” Microsoft has been satisfying their customers for 20 years and that's what they ought to continue to do. To the Senator from Utah and everyone at the Justice Department who wants to stand between Microsoft and its customers, all I can say is, fellas, “you can't always get what you want.”